13. Bell Atlantic's own statements, therefore, indicate that its systems are not operationally ready. Moreover, the evidence required to demonstrate that Bell Atlantic's interfaces are capable of processing large volumes of transactions in an accurate, reliable and timely manner can only be obtained through thorough end-to-end integration testing of Bell's proposed OSS interfaces.

14. The mere development of an interface and the publication of technical specifications is not enough. Interface specifications, standing alone, generally do not provide sufficient information to enable systems to interface with each other. Even when industry standards are used, those standards are often defined to allow flexibility in the design of systems. Different companies may apply the standards differently. Further, each company will have its own unique methods and procedures, system design parameters, and other policies and practices, referred to as "business rules," that are essential to the functioning of its systems. These business rules are not generally reflected in the technical specifications, but they are crucial to the successful use of a systems interface. Both parties must understand how data will be "packaged" within messages that cross the interface, the identity of the data elements that will and will not be provided, the sequence of messages that will be exchanged, the "edits" that are programmed into the systems, and the business activities that will occur in response to particular messages. Without full knowledge and compliance with both the interface specifications and business rules, CLECs will not be able to communicate and interact with Bell Atlantic's systems, and essential transactions will not take place as intended. Problems of this sort can only be uncovered in the course of comprehensive integration testing.

15. Because AT&T recognizes that adequate systems testing is imperative, it has repeatedly throughout its negotiations with Bell Atlantic stressed the importance of comprehensive end-to-end service readiness testing for both the purchase of resold services and unbundled network elements. At a meeting in early November, 1996, in response to AT&T's request to test systems in January, Bell Atlantic told AT&T that it would not be ready to test unbundled elements systems at that time. Further, it stated that resources for such testing might be difficult to obtain, and that the timing of the total services resale testing that AT&T had also requested would affect the timing of the unbundled elements testing.

16. AT&T presented a comprehensive test plan to Bell Atlantic on November 19, 1996. AT&T's proposal was designed to test all phases of the data flows that must be exchanged in the wholesale environment. Because Bell Atlantic had told AT&T that it would not be ready to test unbundled elements in January, AT&T's test proposal focused on total services resale testing first. AT&T's test plan was designed to assess all data flows through the systems architecture to ensure that, under a variety of different scenarios, AT&T customer service orders could be processed and provisioned, and the resulting service maintained and billed. To ensure smooth systems interaction, such testing was to include all data element flows, including the initiation of the transaction by AT&T, the movement of the data elements through AT&T's operations support systems, the transmission of information across the interface to Bell Atlantic, the processing of the data within Bell Atlantic's operations support systems, and, per industry standards, the subsequent return of data to AT&T, as well as escalation procedures and contingent manual processes.

17. AT&T presented its service readiness test plan proposal to Bell Atlantic at a seven hour meeting on November 19, 1996. During that meeting, Bell Atlantic representatives listened to AT&T's proposal and appeared receptive to it. When asked at the end of the meeting whether Bell Atlantic would accept the proposal, Bell Atlantic's representatives stated that they wanted some time to review the proposal with senior management and to add some of Bell Atlantic's own testing requirements. As a result, Bell Atlantic suggested that the companies meet in another week or two.

18. The very next day, however, on November 20, 1996, Bell Atlantic sent AT&T a letter inviting AT&T to a December 17, 1996 "Resale Seminar." That letter revealed that Bell Atlantic had decided to use only one test partner for the entirety of the region, that it had intended to determine unilaterally who its test partner would be, and that it had prepared its own test plan and schedule. None of this information had been disclosed to AT&T at its meeting with Bell Atlantic the day before.

19. At the December 17 seminar, Bell Atlantic revealed that it had selected as its test partner USN, a small business-only reseller which has no customers in Bell Atlantic's territory and only approximately 70 employees worldwide. At the time that USN was selected, it was not authorized to provide local service anywhere in Bell Atlantic's territory, and it only received authorization on February 17, 1997 to provide local service in Maryland, where the test is being conducted.[7] Bell Atlantic asserted that USN was "randomly" chosen by Coopers &

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[7] Bell Atlantic's choice of a Maryland test partner is also peculiar because it had previously told AT&T that its preference was to test its systems in Pennsylvania where its systems were the most up to date and closest to Bellcore standards, and that it might have operational difficulties in the old C&P Telephone territories.

Lybrand from a pool of candidates that had been deemed qualified. See also Albert Decl. ¶ 71 (stating that Bell Atlantic is conducting an operational readiness test with "a randomly selected reseller"). However, USN also happens to be the test partner for OSS interfaces chosen by Ameritech.

20. Since the December 17 seminar, Bell Atlantic has not disclosed any details about or results of its testing with USN. Bell Atlantic has not even disclosed what OSS functions or interfaces are being tested, or what kinds of service order types or volumes are involved. Although Bell Atlantic had initially stated that the test results would be made publicly available in February, no test results have been released to date. Despite repeated requests, Bell Atlantic has not to date produced any intermediate test results, and it has provided no more study documentation than a cursory one page summary of the test plan. Moreover, Bell Atlantic's representatives have told AT&T on more than one occasion that the test was not going well and that it was running about a month behind schedule.

21. Significantly, what Bell Atlantic has also admitted is that no USN customers are involved in the testing, and that all of the test participants are Bell Atlantic customers that are being "loaned" to USN solely for purposes of the test, and they will remain customers of Bell Atlantic when the tests are completed. These facts make clear that this supposed "reseller test" is nothing more than a "self test" by Bell Atlantic of its own systems. Thus, even if Bell did release the test results, it would show nothing about the ability of Bell Atlantic's systems to interface with CLECs. To this day, Bell Atlantic has still not provided AT&T with the interfaces necessary for testing.

22. On February 10, 1997, on the same day that it filed its supplemental report with the Commission alleging compliance with Section 271, Bell Atlantic finally accepted AT&T's test proposal, which had not changed from AT&T's November proposal. That testing is now scheduled to begin later this month. However, in response to AT&T's repeated requests that the companies also conduct service readiness testing for unbundled network element orders, Bell Atlantic has stated only that it "currently expects to have the capability" to process such orders by May 1, 1997.[8] Without even having the capability to test orders for unbundled network elements until, at the earliest, May 1, 1997, it is difficult to comprehend how Bell Atlantic can believe that it is in compliance with this checklist requirement.

23. Even Bell Atlantic's eleventh hour agreement to conduct testing with AT&T is tenuous. AT&T's test plan proceeds in a number of phases. For example, the purpose of Phase "0" is to conduct connectivity testing; Phase 1 concentrates on pretesting in a preproduction environment; and Phase 2 is full blown service readiness testing, which is designed to simulate a full production environment. Bell Atlantic representatives, however, have vacillated about whether Bell Altantic would be willing to proceed to Phase 2 of the test until there is a signed interconnection agreement with AT&T, a requirement that is both unnecessary and entirely within Bell Atlantic's control. Further, in a draft of the testing agreement that was forwarded to AT&T last week, Bell Atlantic is now seeking to add some requirements that threaten the current testing schedule.[9]

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[8] Letter from Jae Bradley, Bell Atlantic, to Jim Cottingham, AT&T, dated February 27, 1997.

[9] See page 2 of Attachment A to Bell Atlantic's draft of the proposed Testing (continued...)

IV. THE LACK OF PARITY OF ACCESS TO OPERATIONS SUPPORT SYSTEMS

24. In additional to the acknowledged lack of operational readiness of the OSS interfaces proposed by Bell Atlantic, it is clear even from the cursory descriptions provided that the interfaces which Bell Atlantic proposes to provide initially to CLECs will not provide parity of access required by the 1996 Act. This deficiency is obvious in Bell Atlantic's description of its proposed interfaces for the ordering and provisioning of service resale. Although the FCC has ordered incumbent LECs to provide electronic interfaces for machine-to-machine communications by CLECs,[10] the interfaces presently being proposed by Bell Atlantic will not permit CLECs to communicate with Bell Atlantic's ordering and provisioning systems at all. Rather, those interfaces will only enable a CLEC to submit orders to Bell Atlantic's "Competitive LEC Sales and Service [Center] (CSSC) representatives," who will then manually input the orders into Bell Atlantic's service order processing system. Albert Decl. ¶ 67. In other words, the data that a CLEC keys in on its side of the interface will be received by a Bell Atlantic employee via terminal or printer, who will then manually rekey the order into Bell Atlantic's systems. Thus, a CLEC's customer order will be processed twice -- once by the CLEC agent and then again by a Bell Atlantic representative. Moreover, Bell Atlantic states that a fully "mechanized" process will not be available for all types of CLEC orders for "several years." Id. Thus, for several years there will be no electronic connection or communication at all between the CLEC and Bell Atlantic operations support systems. With this arrangement, Bell cannot

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9 (...continued)
Agreement (imposing a 60 day advance notice requirement for certain information for Phase 2 of the test).

10 See First Report and Order, ¶ 523.

even maintain any pretense of parity, since Bell Atlantic's own local service orders are entered directly into its service order processing system by the Bell Atlantic representative who is dealing with the customer with no further human intervention.

25. This proposed CLEC ordering procedure amounts to nothing more than the equivalent of communication of orders by facsimile, a procedure expressly rejected by the FCC as "obviously" inadequate to meet the obligation of incumbent LECs to provide nondiscriminatory electronic access to their operations support systems. The FCC found that where an incumbent LEC's customer service representatives have direct electronic access to OSS systems, the incumbent LEC "must provide the same access to competing providers," and "[o]bviously, an incumbent that provisions network resources electronically does not discharge its obligation under section 251(c)(3) by offering competing providers access that involves human intervention, such as facsimile-based ordering." First Report and Order, ¶ 523.

26. The repetitious manual processing of CLEC orders required by Bell Atlantic is also a serious concern because it will delay the ordering and provisioning process for CLECs, including the receipt of firm order confirmations or order rejections. This arrangement will prevent the CLEC agent from receiving prompt notification of the status of service orders and will preclude CLECs from making edits or corrections to orders to avoid order rejection while the customer is still "on-line." Thus, unlike Bell Atlantic representatives, CLECs will have to call the customer back to correct orders that Bell Atlantic's systems have rejected. The manual retyping required by Bell Atlantic's proposed arrangement also greatly increases the potential for error in the processing of CLEC orders. Further, it will not be apparent to a CLEC's customers that these problems are caused by Bell Atlantic, but they will instead be perceived to

be the fault of the CLEC. The manual reprocessing of CLEC orders proposed by Bell Atlantic can thus be expected to seriously jeopardize the ability of CLECs to win and retain local customers. Finally, AT&T's inability to receive prompt order rejections will make it impossible for AT&T to engage in error elimination analysis during testing to determine whether the errors were caused by AT&T's own systems. This, in turn, will make it impossible for AT&T to correct any such systems problems.

27. Manual processing is particularly troublesome for market entry on the broad scale planned by AT&T, because experience shows that manual processes are incapable of handling large volumes of transactions in a consistent, accurate, and timely fashion, and are thus likely to preclude Bell Atlantic from delivering timely and efficient services. For example, when manual processes had to be employed at divestiture due to order fallout, a nationwide backlog of order processing brought ordering to a standstill across the country.[11] Capacity should be evaluated by analogy to the long distance market, where currently more than 50 million customers nationwide change carriers each year. Similar turnover can be expected in local services markets when competition takes hold. In order to make local competition a reality, it is imperative that AT&T and other large-scale potential CLECs have confidence that Bell Atlantic will be able to handle large volumes of customer orders for changes in their local service provider. Here, however, Bell Atlantic has not committed to any minimum staffing levels to perform the required rekeying of CLEC orders.

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[11] See, e.g., Telecommunications Reports, pp. 4-6 (May 21, 1984); id., pp. 8-10 (March 19, 1984); id., p. 3 (March 12, 1984).

28. Bell Atlantic does not dispute that fully electronic OSS interfaces requiring no manual intervention are technically feasible, as the FCC found. See First Report and Order, ¶ 520. Moreover, incumbent LECs, including Bell Atlantic, have provided such fully electronic machine-to-machine, system-to-system interfaces to interexchange carriers for many years in connection with interLATA access services.

29. Recognizing the inadequacy and obvious lack of parity presented by its proposed manual reprocessing of CLEC local service orders, Bell Atlantic states in its filing that it is "developing" a capability to input CLEC orders directly into its service order processing system on a "mechanized basis," but readily admits that it will be "several years" before all local service request types are mechanized. Albert Decl. ¶ 67. Moreover, Bell Atlantic provides no details about how this "mechanized" access will work. Nor does it say when this mechanized access will become available to CLECs even for simple basic residential service orders.

30. As an alternative to waiting several years for mechanized access to Bell Atlantic's operations support systems through its proposed electronic gateway, Bell Atlantic claimed in Docket No. P-00961137 that it will provide "direct access to its service order processing systems to AT&T and any other CLEC that requests such access," thereby enabling CLECs to input service orders directly into Bell Atlantic's systems without using the proposed gateway and without the manual reprocessing of their service orders by Bell Atlantic.[12] This offer is completely disingenuous. AT&T requested such direct OSS access in November 1996. Bell Atlantic's initial response was to try to convince AT&T that it really did not want such

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[12] See Bell Atlantic - Pennsylvania, Inc. Reply Comments, Petition of Bell Atlantic - Pennsylvania, Inc. for Approval of a Statement of Generally Available Terms and Conditions, Docket No. P-00961137 (filed February 5, 1997), p. 8.

direct OSS access. When pressed, Bell Atlantic informed AT&T in February that such access was not presently available, that Bell Atlantic would need to "mediate" any such direct CLEC access, and that the development of the necessary hardware and software would be expected to take about a year.

31. In addition to the proposed manual processing of all CLEC orders by Bell Atlantic, Bell Atlantic has insisted that all CLEC orders will be processed only in batches at 30-minute intervals. When contrasted to the real time processing which Bell Atlantic provides for its own service orders, this batch processing of CLEC orders is clearly not parity. Moreover, the delay in the processing of CLEC orders could affect the timeliness of the provisioning of CLEC orders, particularly if a provisioning day is closed out during the 30-minute interval by intervening Bell Atlantic orders.

32. Bell Atlantic has also stated that firm order confirmations will not be sent to CLECs until 24 hours after the order is sent to Bell Atlantic. By contrast, Bell Atlantic's own customer service representatives receive notice that their orders have been accepted (or rejected) by Bell Atlantic's service order processing systems immediately. Thus, Bell Atlantic's representatives will be able to confirm orders with their customers during the initial contact, while CLEC representatives will have to call back the customer at least 24 hours later to provide order confirmation.

33. Bell Atlantic has further stated that it will be unable to provide a daily usage feed for CLEC customers in less than 72 hours. CLECs such as AT&T cannot provide timely and accurate bills without such daily usage feeds. As a result of this 72-hour delay, service for a new CLEC customer cannot be provisioned by Bell Atlantic in less than three days

-- a limitation that does not apply to the provisioning of service for Bell Atlantic's own customers.

34. The many delays in the ordering and provisioning of CLEC orders under Bell Atlantic's proposals will not only prevent CLECs from completing provisioning in the same time frames as Bell Atlantic, but will also mean that CLECs will not know the status of orders that are in jeopardy. If the provisioning of an order is in jeopardy, the CLEC might not even know that there is a problem until it is too late to notify the customer and reschedule the installation.

V. THE ADEQUACY OF CAPACITY TO MEET CLEC REQUIREMENTS

35. In addition to failing to show that it has actually deployed fully tested, operationally ready interfaces for all OSS functions and for all services and unbundled network elements, Bell Atlantic has failed to show that the OSS interfaces and other access procedures which it proposes will have adequate capacity to handle the volume of CLEC orders and other service requests that can reasonably be expected to occur as local markets become competitive. This is particularly important because multiple carriers will likely enter the local services market. Bell Atlantic has provided no information about the capacity of its systems or the volumes of CLEC transactions it will be able to process through its systems.

36. Adequate load carrying capacity is an essential aspect of establishing the operational readiness of Bell Atlantic's proposed interfaces and related OSS access procedures. An interface or service order processing procedure that operates satisfactorily at low volumes but "chokes" the processing flow for CLEC service orders at actual market volumes will place Bell Atlantic's competitors and their customers at a severe disadvantage.

37. As discussed above, a particular concern in this regard is the 100 percent level of manual intervention which Bell Atlantic proposes to rely on to enter all CLEC local service orders. This process will be exceedingly tedious and time consuming, and as competition develops in local markets, the volume of orders from all CLECs can be expected to increase sharply.[13] As a result, Bell Atlantic's OSS access proposal poses a high risk of order backlogs and service delays for CLECs.

VI. THE MEASUREMENT OF NONDISCRIMINATORY ACCESS TO OPERATIONS SUPPORT SYSTEMS

38. Even if the fully electronic OSS interfaces which Bell Atlantic proposes to develop and deploy in the future were in a state of operational readiness, that would not establish that Bell Atlantic was providing AT&T and other CLECs with nondiscriminatory access to its operations support systems. Bell Atlantic must show more than that it is providing the CLECs with access to its operations support systems; it must show that the access being provided is nondiscriminatory.

39. A large CLEC like AT&T has a large pre-existing customer base that is already being served through the use of advanced electronic operations support systems. In order to maintain its reputation in the market for providing quality service to all customers requesting service, AT&T must be prepared from the outset to serve large numbers of customers and to handle orders of all levels of complexity. AT&T's customers will not accept an inferior product. In order to be an effective competitor in the provision of local services and provide the

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[13] Such problems were experienced by AT&T in Rochester, New York, as a result of Rochester Telephone's attempt to manually process CLEC local service orders. See First Report and Order, ¶ 508.

quality of service that its customers have come to expect, AT&T must be able to obtain access to the information in Bell Atlantic's operations support systems with no less timeliness, accuracy, or ease of access than that experienced by Bell Atlantic's own personnel.

40. To establish that the access provided by Bell Atlantic is nondiscriminatory, the OSS access provided by Bell Atlantic will have to be monitored to determine whether Bell Atlantic's proposed interfaces actually provide CLECs with access to its systems having an equivalent level of accuracy, reliability and timeliness as the access that Bell Atlantic provides to its own customer service representatives.

41. To establish that Bell Atlantic is providing nondiscriminatory access to its operations support systems, a series of performance measurements and reporting mechanisms for OSS access are needed. Such a measurement plan should embody four criteria: (1) the plan should support statistically valid comparisons of CLEC experience with the experience of Bell Atlantic's own local service operations; (2) the plan must monitor access to operations support systems for each interface as well as at the service level; (3) the plan should account for potential performance variations due to differences in service and activity mix; and (4) the plan must be implemented and producing results which demonstrate that nondiscriminatory access is in fact being delivered across a broad range of resold services and unbundled network elements. To date, however, Bell Atlantic has not agreed to any meaningful measurement plan for comparing the access to operations support systems that it will provide to CLECs with the access that Bell Atlantic provides to itself.

VI. CONCLUSION

For the foregoing reasons, the Commission should find that Bell Atlantic is not in compliance with its obligation to provide nondiscriminatory access to its operations support systems, and should therefore not support Bell Atlantic's Section 271 application.

I verify that the foregoing is true and correct to the best of my knowledge and belief. This statement is made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Robert J. Kirchberger

NEW YORK STATE
PUBLIC SERVICE COMMISSION

In the Matter of: Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions (§ 252) and Draft Filing of Petition for InterLATA Entry (§ 271)	Case No. 97-C-0271

INITIAL BRIEF OF LCI INTERNATIONAL TELECOM CORP. IN OPPOSITION TO NEW YORK TELEPHONE COMPANY'S (1) PETITION FOR APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS AND (2) DRAFT PETITION FOR InterLATA ENTRY

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I. SUMMARY OF ARGUMENT

It is indisputable from the record developed by this Commission that NYNEX is not presently in compliance with the requirements of 47 U.S.C. § 271(c). As NYNEX itself conceded at the Technical Conference, it is not yet commercially providing a number of the checklist items that are a prerequisite to NYNEX' entry into in-region, interLATA service, including among others, unbundled local switching, interoffice transport facilities and operations support systems ("OSS"). Reporter's Transcript of Minutes of Technical Conference ("RT") at 228-29. These elements, in particular, are essential to a competitive local exchange carrier's development and deployment of a network platform through which to offer local service in competition to NYNEX. Without these elements, CLEC's such as LCI, who do not presently have -- and cannot immediately begin to build -- their own local network facilities, will be relegated for a substantial period of time to the restricted status of a reseller of NYNEX' services.

The fact that NYNEX claims to have "paper offerings" of all of these elements in the form of either interconnection agreements or its Statement of Generally Accepted Terms and Conditions ("SGAT") should not be deemed by this Commission to be sufficient for compliance with section 271. The language of section 271 does not permit NYNEX to "mix and match" items from interconnection agreements ("Track A") with items from SGAT's ("Track B") to satisfy section 271's requirements.[1] Moreover,

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1 This was recently affirmed by the Hearing Examiner for the Illinois Commerce Commission in a proposed order issued on March 6, 1997:

> "Tracks A and B are two separate and distinct alternatives which cannot be combined. . . . The language of Section 271 is clear that no such [mix and match] option is provided."

Investigation concerning Illinois Bell Telephone Company's compliance with Section 271(c) of the Telecommunications Act of 1996, Hearing Examiner's Proposed Order, ICC Docket No. 96-0404 (March 6, 1997) at p. 17.

"paper offers" provide no assurance that the items in question can be ordered and provisioned to CLEC's in sufficient quantities and in a manner that will allow them to provide service to their own customers on a commercial basis. To borrow on a metaphor used recently in this context by the Honorable Joel I. Klein, Acting Assistant Attorney General of the Antitrust Division of the Department of Justice, the best way to make sure that gas can actually flow through the pipeline is to see it happen.[2] Here, there is no gas whatsoever in NYNEX' pipeline for such crucial elements as unbundled switching and OSS.

NYNEX representatives indicated at the Technical Conference that it was currently in discussions with one CLEC to provide unbundled local switching. RT at 230-31. That CLEC is LCI. However, what NYNEX representatives did not disclose is that LCI is not intending to immediately offer commercial service with unbundled elements, but is only seeking to begin a preliminary "alpha" test of NYNEX' systems and procedures for ordering and provisioning of unbundled elements. *See* Letter from Anne K. Bingaman of LCI to Jack Goldberg of NYNEX dated March 24, 1997, attached hereto as Exhibit A.

That this Commission should not allow "paper offerings" to satisfy section 271 is further confirmed by what has happened thus far with those checklist items that

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2 Hon. Joel I. Klein, *Preparing for Competition in a Deregulated Telecommunications Market,* Address at the Glasser Legalworks Seminar (March 11, 1997). In context, Mr. Klein's remarks were as follows:

> "Once we see successful full-scale entry, however, then we will have reason to believe that the local market is open to competition. This approach doesn't require the shift of any particular amount of market share; nor should it take very long once there is true broad-based entry into the RBOC's market. Rather, using a metaphor that I've become quite fond of, **we just want to make sure that gas actually can flow through the pipeline; and the best way to do that is to see it happen.**" (Emphasis supplied.)

NYNEX is actually providing to CLEC's, albeit in limited quantities. The record evidence developed at the Technical Conference overwhelmingly demonstrated that NYNEX is not providing those elements on terms and conditions that are just, reasonable and nondiscriminatory. Unbundled loops and resale services are both good examples.

NYNEX has thus far provisioned only 15,000 unbundled loops (RT at 228), out of a total of over 10 million access lines in New York.[3] Yet despite this inconsequential number, several CLECs, in particular MFS, to whom over 99% of the loops have been sold, have faced numerous provisioning problems in the early stages of their attempted competitive entry. These have included missed due dates for "hot cuts" (a transfer of existing loops from NYNEX to the CLEC), missed due dates for provisioning new loops, and cut-overs of interim number portability before the loops themselves are changed, leaving customers without service. RT at 261-69. Given these problems, MFS registered at the Technical Conference its justifiable concern that NYNEX will not be able to meet, in a commercially reasonable and timely manner, what will most assuredly be an ever-escalating demand for unbundled loops -- a demand that one CLEC estimated could rise as high as 250,000 orders per month just for "hot cut" loops alone! *See* Statement of Kevin Curran on behalf of AT&T Communications of New York, Inc. ("Curran Stmt."), Exh. 11 at p. 14.

Similar problems and concerns exist with respect to resale, most of which are attributable to admitted inadequacies in NYNEX' OSS. Although it is a relatively new entrant in the resale market in New York -- having been in business since only

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3 *See* Federal Communications Commission, *Statistics of Communications Common Carriers* 153 (1995/1996 ed.), which reports that as of December 31, 1995, the total switched access lines for New York Telephone were 10,720,007.

November of 1996 and selling service now to just over 400 small business customers -- LCI has experienced a number of these problems firsthand, including limited and discriminatory access to NYNEX' OSS, discrimination in OSS response time, delays in the provisioning of service, and delays in providing billing information. See Affidavit of Michael L. Wajsgras on behalf of LCI International Telecom Corp. ("Wajsgras Aff."), Exh. 1 at pp. 3-8.

During the Technical Conference, this Commission had an opportunity to hear NYNEX concede that (1) its WEB/GUI interface (used by all but one of the 11 active resale CLECs) is not "the most speedy in the business," and that "response times can be improved" (RT at 454); (2) CLEC's resale orders, once delivered through the WEB/GUI interface, have to be manually processed by NYNEX' staff (RT at 386) ; (3) CLECs must wait on average more than one minute to obtain responsive information from NYNEX' OSS (RT at 396), whereas NYNEX' own retail operations can obtain that same information in two to ten seconds (RT at 447-48); (4) NYNEX cannot currently provide electronic notification of rejected orders (RT at 490); (5) CLECs cannot change or correct their orders electronically until a service order number has been assigned (RT at 492); (6) CLECs cannot place "migration as specified" orders (RT at 460-61); (7) NYNEX has not performed any "stress testing" on its OSS, and does not, therefore, know whether its system can handle substantially increased demand (RT at 442-43); and (8) CLECs cannot, through NYNEX' OSS, determine a customer's billing telephone number ("BTN") from its working telephone number (RT at 434), whereas NYNEX' own retail operations can (RT at 448-49).

These are just a few of the shortcomings that were addressed at the Technical Conference, and which establish that NYNEX is not providing parity of service to resale CLECs, as required by the Telecommunications Act.

In the brief that follows, LCI will not address each and every issue in the proposed table of contents specified by the Commission in its procedural ruling of

April 8, 1997. LCI's silence on any issue should not be taken, however, as an acknowledgment by it that NYNEX has complied with the Telecommunications Act as to that issue. Instead, LCI joins in the arguments that it anticipates will be filed by other CLECs on those issues.

For the reasons discussed more fully below and in the briefs that will be filed by the other parties, LCI requests that this Commission issue an order (1) under section 271(a)(2)(B) advising the FCC that NYNEX is not in compliance with section 271(c), and (2) under section 252(f)(2) disapproving of NYNEX' SGAT.

II. STATEMENT OF GENERALLY AVAILABLE TERMS/IMPLEMENTATION OF THE COMPETITIVE CHECKLIST.

A. In accordance with §§ 251, 252 and 271 of the Telecommunications Act of 1996, for each element of service, please answer the following questions as applicable.

a. Is the item commercially available?

b. Is it available at any technically feasible point?

c. Is it available at rates, terms and conditions that are just, reasonable and nondiscriminatory?

ii. Unbundled Network Elements (§ 251(c)(3))

1. Local Loops:

To date, NYNEX has provided only 15,000 unbundled loops in New York, most of which are basic, two wire loops capable of transmitting analog signals with a band width of 300 to 3,000 hertz. RT at 238. Approximately 99% of these loops have been purchased by only one CLEC, MFS. RT at 238 and 261-62.

NYNEX has over 10 million switched access lines in New York. *See* Federal Communications Commission, *Statistics of Communications Common Carriers* 153 (1995/96 ed.). NYNEX has not shown that unbundled loops are "commercially available" when, over a period of at least 14 to 15 months, it has only sold only 15,000 loops (one-tenth of one percent of the available loops), to only one CLEC. These numbers are simply dwarfed by the estimates of future demand for unbundled loops, which one CLEC has indicated could reach as high as 250,000 loop conversion orders per month. Curran Stmt., Exh. 11 at pp. 12-14.

NYNEX has not demonstrated that it can timely provision the meager orders it has received to date, let alone satisfy the anticipated demand. MFS witnesses testified at the Technical Conference of numerous problems it has experienced to date in purchasing basic, analog unbundled loops. These included missed due dates for transferring service on existing loops (so-called "hot cuts"), missed due dates for installing new loops, and end-users loss of service when interim number portability was cut over before the loops themselves were transferred. RT at 261-269. Another CLEC, TCG, has faced similar problems in test orders for unbundled loops, and has also been unable to transmit its orders electronically through NYNEX' DCAS gateway. RT at 271-276.

Nor can NYNEX prove that it is currently providing unbundled loops (and services related thereto) to CLECs on terms that are nondiscriminatory. NYNEX conceded at the Technical Conference that it has not yet developed -- and will not have ready for at least another three months -- the systems by which it will be able to measure various aspects of the service provided to CLECs for purposes of determining parity. RT at 258-60. For example, NYNEX does not yet maintain for unbundled loops the average installation interval for CLECs; that is one of the measures that NYNEX is currently developing. RT at 296.

NYNEX also cannot establish that its terms for installing unbundled loops are just and reasonable. Without any explanation or apparent justification, NYNEX in its SGAT has decreed that it will not commit to definite installation intervals for orders of more than 10 loops, but instead will negotiate these on a case-by-case basis. *See* SGAT § 5.5.3 (at p. 5-51). At the Technical Conference, NYNEX would not commit to what these negotiated intervals would be (RT at 313-14), which means that as things now stand, it will be left to NYNEX' own discretion as to how quickly these orders will be installed. One can only imagine how long these intervals will become if NYNEX, on the present record, is deemed in compliance with section 271(c) and allowed into long distance service, as NYNEX will then no longer have any incentive to timely respond to CLEC orders.

2. Local And Tandem Switching Capability:

NYNEX is not currently providing local or tandem switching as an unbundled element to any CLEC. RT at 228-29. LCI is currently in discussion with NYNEX to obtain unbundled local switching (in combination with other network elements) in order to test NYNEX' systems and procedures for ordering and provisioning such elements. LCI has just initiated the so-called 30-business day Network Design Request ("NDR") process specified by NYNEX in its SGAT and about which NYNEX testified at the Technical Conference. *See* SGAT § 5.6.1.1(F)(3) and RT at 333-40. At the outset of that process, LCI determined that NYNEX has not specified in its SGAT any provision permitting CLECs to bill access charges for calls that terminate to the CLEC's end-users served by the unbundled local switch. The CLEC's right to recover these access charges was recognized by the FCC in its First Report and Order ("Order") issued on August 8, 1996, in CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. *See* Order at ¶ 363, n.772 ("We also note that where new entrants purchase access to unbundled network elements to provide exchange access services . . . the new entrants may assess